



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

5 Post Office Square – Suite 100

BOSTON, MA 02109-3912

**URGENT LEGAL MATTER – PROMPT ATTENTION REQUIRED**  
**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

JUN 03 2016

Robert A. Moore  
President  
Dead River Company  
82 Running Hill Road, Suite 400  
South Portland, ME 04106-3218

Re: (1) Draft Notice of Violation and Administrative Order Issued Pursuant to  
Section 113 of the Clean Air Act, 42 U.S.C. § 7413; and (2) Request for  
Information Issued Pursuant to Section 114 of the Clean Air Act, 42 U.S.C. § 7414

Dear Mr. Moore:

Enclosed please find a draft Notice of Violation and Administrative Order (“NOV/AO”) that EPA proposes to issue pursuant to Section 112(r) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7412(r), for violations of the Act’s risk management program regulations, set forth at 40 C.F.R. Part 68 (“RMP regulations”). This letter also contains an attached Information Request issued pursuant to Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1), which requires submission of certain information needed to assess compliance with the Act.

On June 10, 2014, the United States Environmental Protection Agency Region 1 (“EPA”) conducted an inspection of Dead River Company’s bulk propane facility at 6 Bezanson Road, Bellows Falls, VT 05101 (the “Facility”). The purpose of this inspection (the “June 2014 inspection”) was, in part, to evaluate compliance with Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the RMP regulations. The goal of Section 112(r) and the RMP regulations is to prevent accidental releases of substances that can cause serious harm to public health and the environment.

During the June 2014 inspection, my staff observed violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in several processes at the Facility. Dead River Company (“Dead River”) representatives were unable to answer some questions asked by EPA during the June 2014 inspection. Regardless, EPA found non-compliance with many requirements of the RMP regulations for the propane storage and propane unloading processes at the Facility. Following the inspection, EPA corresponded with Dead River Company by email, seeking additional information regarding compliance with Section 112(r), including but not limited to requests for an RMP that was certified delivered to EPA, a process hazard analysis, piping and

instrumentation diagrams, and weld test results. Some of this information was provided to EPA in the summer of 2014, but the responses were incomplete.

In order to assess these potential changes and to obtain answers to the questions Dead River was unable to answer during the June 2014 inspection and thereafter, EPA requests responses to the attached Information Request (Attachment 2) pursuant to Section 114(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), which authorizes EPA to require a company to submit such information as EPA may reasonably require to determine compliance with and to carry out the purposes of the CAA. Please submit your responses and the signed "Statement of Certification" (Attachment 1) **within forty-five (45) calendar days of your receipt of this letter to:**

Leonard Wallace, Environmental Scientist  
U.S. EPA, Region 1  
5 Post Office Square, Suite 100  
Mail Code OES05-1  
Boston, MA 02109-3912

with a copy to

Margery L. Adams, Senior Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square, Suite 100  
Mail Code OES04-2  
Boston, MA 02109-3912

EPA is also sending an identical information request to Green Mountain Railroad Corporation ("Green Mountain Railroad"), as it is the owner of the Facility. A combined response to the questions, submitted jointly by Dead River and Green Mountain Railroad, would be preferable to EPA, but is not required.

Please be advised that compliance with this Information Request is mandatory. Failure to provide the information requested may result in one or more of the following actions: (1) issuance of an administrative penalty order pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d); (2) issuance of an order requiring compliance with this request pursuant to Section 113(a) of the Act, 42 U.S.C. § 7413(a); (3) commencement of a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b); and/or any other action authorized under the Act. Please be further advised that submittal of false, fictitious, or fraudulent statements may subject you to criminal penalties under Section 113(c) of the Act, 42 U.S.C. § 7413(c). This reporting requirement is not subject to Office of Management and Budget review under the Paperwork Reduction Act.

Under Section 114(c) of the Act, 42 U.S.C. § 7414(c), and pursuant to regulations at 40 C.F.R. Part 2, including 40 C.F.R. § 2.301, you are entitled to show that any information that you provide to EPA involves trade secrets and is regarded as confidential business information and request that such information be treated as confidential. Any such claim for confidentiality must conform to the requirements of 40 C.F.R. § 2.203(b).

In addition to this information request, pursuant to 40 C.F.R. §§ 2.204 and 68.152, EPA is asking that you substantiate your prior claim that information already provided to Leonard Wallace of EPA in an email from Leslie Anderson of Dead River on June 25, 2014 meets the substantive criteria for confidential business information set out in 40 C.F.R. § 2.204(e)(4)(i), (v), (vi), and (viii), and 40 C.F.R. § 2.301. Pursuant to 40 C.F.R. § 68.152, EPA also requests that you provide a sanitized version of the June 25, 2014 email which does not contain the information which is claimed to be confidential.

As noted above, a "Statement of Certification" must accompany your response to this Reporting Requirement. The statement must be signed and dated. This statement certifies that the response submitted to EPA is complete and contains all documents and information responsive to this request that is known to you following a complete and thorough review of all information and sources in your possession, control, or custody. Failure to properly certify, or submission of a fraudulent certification, may result in criminal proceedings against you.

The draft NOV/AO orders Dead River and Green Mountain Railroad to correct the identified violations. EPA is electing to share a draft version of the NOV/AO with you at this time so that the information you provide in response to the Information Request may be incorporated into the Final NOV/AO, and to offer you the opportunity to provide EPA with comments regarding the factual allegations or timeline contained in the NOV/AO. For example, EPA recognizes that twenty-three months have passed since the June 2014 inspection, when EPA brought many of these deficiencies to Dead River's attention. Accordingly, EPA hopes that some of these issues have already been addressed and welcomes such information. **If you have such information or other comments on the Draft NOV/AO, please provide them in writing to EPA within forty-five (45) days of your receipt of this letter.** This information may accompany your responses to the Information Request above or arrive under separate cover.

EPA plans to issue a Final NOV/AO, whether identical to this Draft or modified in response to your timely-provided information and comments, no more than seventy-five (75) days from your receipt of this Draft. EPA hopes that you and Green Mountain Railroad will sign the NOV/AO as an order on consent, but is prepared to issue a unilateral order if necessary.

Note that the issuance of this NOV/AO does not preclude EPA from electing to pursue further enforcement pursuant to the CAA, the Emergency Planning and Community-Right-to-Know Act, or any other federal statute that may apply.

During the June 2014 inspection, EPA observed several other potentially dangerous conditions that are either not part of the RMP processes at the Facility or that EPA could not, without additional information, substantiate as violations. These issues are not addressed in the NOV/AO, but EPA is seeking information regarding those conditions and would like to discuss them with you following issuance of the NOV/AO.

EPA encourages you to give this matter your immediate attention and to respond with your comments regarding the NOV/AO and responses to the Information Request within the time specified above. If you have any legal questions, or would like to communicate to EPA via counsel, please contact Margery Adams, Senior Enforcement Counsel, at (617) 918-1733. Operational and technical staff may direct technical questions to Leonard Wallace at (617) 918-1835.

Thank you for your anticipated cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Susan Studlien".

Susan Studlien, Director  
Office of Environmental Stewardship

cc: Leonard Wallace, EPA  
Margery L. Adams, EPA

Enclosures:

1. Statement of Certification
2. Information Request
3. Draft Notice of Violation and Administrative Order
4. Small Business Resources information sheet

## ATTACHMENT 1

**Instructions: Complete and Include With Your Response.**

### STATEMENT OF CERTIFICATION

I certify under penalty of law that I have personally examined the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment.

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date

Dead River Company

## ATTACHMENT 2

### DEAD RIVER COMPANY ("DEAD RIVER") INFORMATION REQUEST

**Guidance on How to Respond.** You must submit all responsive documents. Please respond separately to each of the questions, referencing each question by paragraph or subparagraph number in your answer. The response must include copies of all documents that you reference in your response or which you feel are relevant to the information being requested.

As part of your response, please complete the enclosed declaration (Attachment 1) and provide a cover letter carefully specifying what documentation is included to answer each question. (If documents requested in response to one item duplicate those requested by another question, submit only one copy of the documentation.) Your submission must be a self-explanatory, complete response that is dated and signed by an authorized facility official.

**Continuing Obligation to Provide/Correct Information.** If additional information or documents responsive to these questions become known or available after answering this request, including, but not limited to, specific information that may be deemed unknown at the time of your response, EPA hereby requests, pursuant to Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1), that you supplement your response to EPA within ten (10) days of discovering such information. If at any time after the submission of this response, you discover or believe that any portion of the submitted information is incomplete or misrepresents the truth, notify Leonard Wallace of this fact as soon as possible and provide EPA with a corrected response.

**Confidential Business Information.** The information requested herein must be provided even though Shield may contend that it includes possible confidential information or trade secrets. You may, if you desire, assert a confidentiality claim covering part or all of the information requested, pursuant to Section 114(c) of the CAA, 42 U.S.C. § 7414(c), and 40 C.F.R. Section 2.203(b), by attaching to such information at the time it is submitted a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," or "proprietary," or "company confidential." Information covered by such a claim will be disclosed by EPA only to the extent, and only by means, of the procedures set forth in the statute and regulation identified above. If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you. You should read the above cited regulations carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim.

**Please note the burden of proof is on you to demonstrate that information claimed as confidential satisfies the criteria set forth in 40 C.F.R. § 2.208.** If any portion of your response contains information which you claim as confidential, you must submit two copies of any such "confidential business information" in accordance with the following procedures:

- 1) The first copy of any document containing such "confidential business information" must be complete and contain all information. Additionally, each such page must be marked conspicuously to indicate that it is claimed as confidential.
- 2) The second copy of any document that is subject to a CBI claim must be redacted so that it contains only information that is not claimed as confidential.

**Definitions.** The following definitions shall apply to the following words as they appear in this Attachment 2:

The terms "you" or "Dead River" shall include Dead River Company, the addressees of this Request, as well as the addressees' officers, managers, employees, contractors, trustees, partners, successors, assigns, and agents.

The term "Green Mountain Railroad" shall include Green Mountain Railroad Corporation, One Railway Lane, Burlington, VT 05401, and its officers, managers, employees, contractors, trustees, partners, successors, assigns, and agents.

The term "person" shall have the same definition as in Section 302(e) of the CAA (*i.e.*, an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, interstate body, or any agency, department, or instrumentality of the United States, and any officer, agent, or employee thereof).

The term "Facility" means the buildings, tanks, storage areas, unloading stations, railroad tracks and sidings, and other physical structures operated by Dead River Company or used in conjunction with propane unloading and storage operations at 6 Bezanson Road, Bellows Falls, Vermont.

The term "document" means any object that contains, records, stores or presents information, whether in paper, electronic or any other form. The term "document" includes the original or an identical and readable copy thereof, and all non-identical copies (whether different from the original by reason of notation made on such copies or otherwise).

The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.

The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (*e.g.*, corporation, limited liability company, partnership, etc.), organization, if any, and a brief description of its business.

The term "identify" means, with respect to a document, to provide its customary business description, its date, its number, if any (invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance or the subject matter.

The term "RMP" means a Risk Management Plan required by Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), and the regulations found at 40 C.F.R. Part 68.

The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.

All terms not defined herein shall have their ordinary meaning, unless such terms are defined in the Clean Air Act or the regulations found at 40 C.F.R. Part 68, in which case the statutory or regulatory definitions shall apply.

A requested document, item or information shall be deemed to be in your possession, custody or control if you know where it is and can obtain access to it, even if it is not presently in your possession.



## Questions

Provide a separate numbered response to each numbered paragraph or subparagraph below. **To the extent that you believe that you have answered a question in another section, please refer to the section and answer you have provided.**

### Facility Information

1. Please provide a copy of the "Construction Plan" for the Facility including the grounding plan and grounding grid.
2. Please provide a block flow diagram of the technology of the RMP processes, safe upper and lower limits, and an evaluation of consequences of deviations (see 40 C.F.R. § 68.65(2)(c)); and piping and instrumentation diagrams signed by a professional engineer as built (see 40 C.F.R. § 68.65(2)(d)(ii)).
3. Please provide information pertaining to all design codes and standards employed in construction and operation of the equipment in the RMP processes.
4. Please provide documentation showing the methods of, and results of, testing of welds in pipes.

### Compliance Audits

5. Please provide a copy of all reports prepared documenting compliance audits of covered processes conducted pursuant to 40 C.F.R. § 68.79, as well as documentation of actions taken in response to those compliance audits.

### Process Hazard Analyses

6. Please provide a copy of the most recent process hazard analyses ("PHAs") conducted pursuant to 40 C.F.R. § 68.67 for each covered process at the Facility, as well as documentation of any actions taken in response to or a schedule of proposed future actions to be taken in response to each such PHA.

### Training of Truck Drivers

7. Please describe any training provided by Dead River and/or Green Mountain Railroad for each truck driver (whether or not an employee of Dead River) who fills tank trucks or otherwise operates equipment at the Facility. If such training is conducted by third parties, please describe how Dead River and/or Green Mountain Railroad verifies that the training is applicable to the particular procedures at the Facility, including but not limited to, emergency operations and the processes for activating emergency shutoff valves. Please provide any records regarding the training received by specific tank truck drivers who dispense propane or otherwise operate equipment at the Facility.

## Propane Transfer Operations

8. Please describe the emergency shutdown systems utilized at the Facility to prevent or minimize accidental releases during propane transfer operations, including but not limited to the presence and use of remotely operated isolation devices to shut down the system.

## Railroad Siding

9. During the June 2014 inspection, EPA observed propane railcars stationed farther along the rail siding, in addition to railcars attached to the propane transfer stations at the Facility. Please provide the following information regarding propane rail cars stationed along the siding for the period from January 1, 2014 to the present.
  - a. Please provide a copy of the lease(s) showing or describing the boundaries of the property that Dead River leases for operation of the bulk propane facility.
  - b. Who owns railroad siding on which propane tank cars are stationed before they are attached to the propane transfer stations at the Facility? If Dead River leases or otherwise contracts for the use of the railroad siding on which propane rail cars are stationed awaiting attachment to the propane transfer stations, please provide a copy of such leases and contracts. Please identify any other lessee of such siding.
  - c. If the railroad siding (i.e. the siding on which propane tank cars are stationed before they are attached to propane transfer stations) is not private track, at what point on the way to the RMP processes does it become private track?
  - d. Is the railroad siding on which propane tank cars are stationed used for any service other than shipping to and from the Dead River facility?
  - e. Does Dead River ever pay demurrage for propane tank cars stationed on the railroad siding? Under what circumstances, and to whom?
  - f. At what point in the delivery process does Dead River accept ownership or delivery of the propane in railcars?
  - g. For the period January 1, 2014 to the present, how long are propane rail cars stationed on the railroad siding before being connected to other processes at the Facility, (e.g. before they are attached to the propane transfer stations)? Please include both the maximum and typical amounts of time in your response.
  - h. For the period January 1, 2014 to the present, how long have railcars of propane been disconnected from motive power before being moved to and connected to other processes at the Facility? Please include both the maximum and typical amounts of time in your response.
  - i. Do Dead River employees or contractors supervise or control the moving and/or unloading propane rail cars? Please describe.